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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,818	03/09/2004	H. Craig Dees	0546-0203.01	2064
26568 7590 03/19/2009				
COOK ALEX LTD				
SUITE 2850				
200 WEST ADAMS STREET				
CHICAGO, IL 60606				
EXAMINER				
SUTTON, DARRYL C				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
03/19/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,818

Applicant(s)

DEES ET AL.

Examiner

DARRYL C. SUTTON

Art Unit

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5-10 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date 01/19/2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to the RCE filed 12/23/2008. No new claims have been added.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-10 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz (US 5,908,619).

Scholz teaches a hydroalcoholic composition comprised of a lower alcohol, i.e., ethanol, isopropanol, n-propanol (Abstract, column 4, lines 56-64). The composition is further comprised of secondary antimicrobials, such as triclosan (column 17, lines 29-35, 41-43). The compositions are useful as lotions; lotions are defined as liquid or cream, free of propellant (column 1, lines 6-8, column 4, line 5). The composition can be formulated into aerosols (column 18, lines 15-17). The composition can be incorporated into a polymeric material such as a hydrogel layer (column 19, lines 58-61). In order to reduce irritation, and yet maintain efficacy, the secondary antimicrobial level should be adjusted to the minimum level which maintains a low bacteriological count (column 17, lines 45-49). The compositions have an alcohol to water ratio of no

greater than 99:1 by weight. Compositions having a ratio within the range of about 40:60 to 95:5 (i.e. 40-95% weight percent alcohol) ensure an efficacious immediate bacterial kill (column 5, lines 9-16). The antimicrobial may be present in an amount of about 0.05 to 1% by weight (column 17, lines 55-56).

Scholz does not teach that triclosan is present in an amount greater than 0% and equal or less than 0.04%.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the secondary antimicrobial, triclosan, in the formulation along with either ethanol, isopropanol or m-propanol since Scholz teaches their incorporation.

It would have been obvious to use 0.04% of triclosan in the composition since Scholz teaches that about 0.05% of the antimicrobial agent can be present. 4X is within the scope of "about" where the compositions perform substantially the same function in substantially the same manner. Conopco v. May, 24, USPQ2d 1721, 1736 (US District Court, Eastern District of Missouri 1992).

Claims 1, 5-10 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz (US 5,908,619) in view of Luu et al. (US 5,871,763).

Scholz is discussed above.

Scholz does not teach that triclosan is present in an amount greater than 0% and equal or less than 0.04%.

Luu et al. teach a substrate treated with lotion (Abstract). The lotion may also contain one or more optional ingredients, which include a medicinal agent such as an

antimicrobial agent which kills bacteria (column 4, lines 24-31). The antibacterial agent can be present in an amount from about 0.01% to about 10%; and include triclosan (column 9, lines 23-38).

Where the prior art teaches the general conditions of a claim, it is not inventive to determine the optimal or workable ranges through routine experimentation (See MPEP 2144.07). Accordingly, the antimicrobial action of the composition can be optimized through routine experimentation by varying the amounts of antimicrobials, i.e. triclosan at amounts lower than 0.05%, in the composition, since the claimed amounts are within the "general conditions" taught by the secondary reference.

All claims are rejected.

Conclusion

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darryl C. Sutton whose telephone number is (571)270-3286. The examiner can normally be reached on M-Th from 7:30AM to 5:00PM EST or on Fr from 7:30AM to 4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass, can be reached at (571)272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Darryl C Sutton/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612